



Air Docket
Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, DC 20460

Docket ID No. EPA-HQ-OAR-2004-0014

Comments on Proposed Rule on “Reconsideration of Fugitive Emissions Rule”

Dear Administrator:

The American Distilled Spirits Alliance (“ADSA”) submits the following comments regarding EPA’s proposed rulemaking to reconsider the fugitive emissions rule. ADSA is a trade association of twenty-nine member companies with common interests in the manufacturing, importation, and marketing of distilled spirits products in the United States and around the world. ADSA members produce over 75 percent of the distilled spirits sold in the United States. Previously known as the Presidents’ Forum of the Distilled Spirits Industry, ADSA traces its history back over 40 years.

In this rulemaking, EPA proposes to clarify that fugitive emissions count towards determining whether a physical or operational change at a major stationary source constitutes a “major modification” for purposes of new source review (NSR). In doing so, EPA explains that it “expects that the proposed interpretation, and the resulting revocation of the 2008 Fugitive Emissions Rule and removal of the 1980 exemption will have a limited practical impact and result in limited increased burden for regulated entities.” This is so, EPA says, because

The changes proposed in this rule would only impact sources that do not belong to a listed source category (as listed sources have to include fugitive emissions for major modification purposes under any scenario). More importantly, it would only impact those non-listed sources that are already considered existing major stationary sources (as major modifications can only occur at existing major sources). Given that non-listed sources do not count fugitive emissions towards major source thresholds, the EPA understands the universe of such sources to be relatively small, particularly for sources of predominantly fugitive emissions that might be most concerned with the EPA’s proposed changes.” 87 Fed. Reg. at 62,334.

ADSA agrees with EPA that this proposed rule should have limited practical impact, particularly as it relates to the distilled spirits industry – a non-listed source – because it is our understanding that the EPA intends to continue to follow long-standing EPA policy and consistent regional



regulations for the treatment of fugitive emissions from aging barrel warehouses. However, we note that in the preamble to the proposal, EPA also “welcomes public comment on how to interpret and apply the definition of ‘fugitive emissions’ in the NSR and Title V regulations.” In so doing, EPA summarizes its existing guidance on fugitive emissions. For example, EPA explains that “[d]etermining whether certain emissions are fugitive or non-fugitive at a particular source is inherently a facts specific inquiry.” 87 Fed. Reg. at 62,335. EPA continues that if emissions “do not actually pass through a stack, chimney, vent, or other functionally equivalent opening at a facility...then one must evaluate whether such emissions...could reasonably be collected or captured and discharged through... [such an] opening.” Criteria that guide that evaluation include “whether and to what extent similar facilities collect or capture similar emissions (including how common this practice is, and whether the EPA has established a national emissions standard or regulation that requires some sources in the source category to collect or capture the emissions) and the technical and economic feasibility (e.g., cost) of collecting or capturing the emissions.” *Id.* The objective of the rule defining “fugitive emissions” and the related guidance, EPA has explained, is to “ensure that sources will not discharge as fugitive emissions those emissions which would ordinarily be collected and discharged through stacks or other functionally equivalent openings, and will eliminate disincentives for the construction of ductwork and stacks for the collection of emissions.” 45 Fed. Reg. at 52,693 (1980).

As discussed below, the EPA’s criteria have historically resulted in treatment of evaporative ethanol emissions from aging warehouses as fugitive. Such emissions are not commonly captured or controlled because aging warehouses are designed to promote the exchange of air between the interior of the warehouse (where the aging barrels are located) and the ambient, seasonal climate of the outdoor environment with daily fluctuations of sunlight, humidity, temperature, pressure, and airflow. As EPA and state regulators have recognized repeatedly, the naturally-occurring exchange of air in a barrel aging warehouse is a central contributor to the character, quality, taste, and evaporation rates of the industry’s product. This air exchange takes place through seams, doors, windows, and other openings in the warehouse that are designed to promote the natural exchange of air between the interior and the exterior of the building to allow mother nature to refine and perfect the unique character of aging spirits. It is the distinct essence of the natural, unimpeded climate of barrel aging warehouses that is a key contributor to the unique character that creates the thousands of varieties of bourbon whiskey, and other American whiskeys, in the market today. As such, the collection and capture of aging warehouse evaporative emissions poses serious economic and technical feasibility issues, which explains why those emissions have consistently been treated as fugitive.

As early as 1978 EPA observed that the capture and control of evaporative emissions from aging warehouses is complicated by the fact that those facilities can be spread over large areas, and that altering capture and control systems can affect “such warehouse conditions as temperature, humidity and ventilation” which in turn affect product quality. EPA, “Cost and Engineering Study—Control of VOC Emissions from Whiskey Warehousing” at 1-3 to 1-4 (April 1978).

In 1994, the Jefferson Air Pollution Control District in Kentucky confirmed that “[b]ased on communications with and further elaborations from U.S. EPA, on sources that will be subject to



the first cycle of Title V, your company will NOT be required to submit a Title V application...[because] your emissions are considered fugitive.” Letter from Jefferson County Air Pollution Control District to Brown-Forman (July 1, 1994). Further, on August 19, 1994, the EPA noted in a letter to the Division of Air Pollution Control, State of Tennessee Department of Environment and Conservation (TDEC) that while “EPA has considered ‘functionally equivalent openings’ as emission points which allow measurement of pollution concentration of air flow rate... EPA does not consider windows and screen panels [on whiskey warehouses] to fall within this definition.” After receiving this letter from the EPA, TDEC further confirmed that whiskey warehouses’ evaporative emissions were fugitive and would not be counted as emissions for a Title V operating permit.

In March 1997, in developing emissions factors for the distilled spirits industry, EPA once again observed that “[t]he barrel environment is extremely critical in whisky aging...Ambient atmospheric conditions, such as seasonal variation in temperature and humidity, have a great effect on the aging process...Furthermore, the equilibrium concentrations of the various whisky components depend heavily on the air flow around the barrel. All of these variables are used by each distiller to produce its distinctive brand with its own unique taste, color and aroma...Most warehouses...rely on natural ambient temperature and humidity changes to drive the aging process.” Final Report on AP-42 Emission Factor Documentation for Distilled Spirits, prepared by Midwest Research Institute for EPA (March 1997).

For these same reasons, EPA explained in 1999 (in addressing a fugitive emissions issue for printers and paint manufacturers) that “the presumption that emissions could be reasonably collected from aging warehouses is less compelling” given the absence of “any national standards or SIP requirements” and that installation of collection devices “is uncommon” for this source category. Memorandum from T. Curran, EPA to J. Katz, EPA Region III (Feb. 10, 1999). Similarly, in 2001, EPA approved Maryland’s “reasonably available control technology” requirements for VOCs for a number of source categories, including the distilled spirits industry, observing that “[n]either the proposed nor adopted version of Maryland’s RACT to control VOC emissions from distilled spirits facilities requires that VOCs be controlled from the aging warehouses” due to the fugitive nature of those emissions. 66 Fed. Reg. at 56,220 (2001).

In August 2004, the Indiana Office of Environmental Adjudication ruled that uncontrolled ethanol emissions from a whiskey warehouse in Milan, Indiana are fugitive emissions that do not count towards the applicability threshold for the Clean Air Act Title V operating permit program.

In September 2009, in adopting a collection and control requirement for VOC emissions from brandy and wine aging operations, the San Joaquin Unified Air Pollution Control District concluded that “the nature of whiskey aging operations differs from brandy and wine aging. Specifically, the ambient conditions, such as storage temperature and humidity, and seasonal variations, are important factors in the whiskey aging process...[W]hiskey aging operations strive for a particular blend of temperature, humidity, and ventilation...Therefore, whiskey aging is not considered or included in this rule development process.” Final Draft Staff Report for Rule 4695 (Sept. 17, 2009).



In July 2020, the Indiana Office of Environmental Adjudication reaffirmed its 2004 ruling stating, “The ELJ concludes that the holding in Seagram (that the emissions from whisky aging are fugitive emissions) should apply” and “must be considered as precedent”. They further confirmed that, “It is generally accepted and is standard procedure that, in order to produce good quality whiskey, it must be aged by exposing it to ambient air conditions, including temperature and humidity.”

Of course, to the extent an aging warehouse is located at a site that is “major” for other reasons, fugitive emissions would have to be considered under the proposed rule in the “major modification” determination. However, there are few aging warehouses located at sites that are major sources of non-fugitive emissions. For this reason as well, we agree with EPA that its proposed clarification should have limited practical impact, particularly on the distilled spirits industry.

Finally, EPA observes in this proposal that “[t]o the extent that the EPA seeks to provide additional guidance on applying the definition of ‘fugitive emissions’ in the future, any such guidance may be provided alongside, or separate from, any final action in this rulemaking concerning the treatment of fugitive emissions for major modifications.” 87 Fed. Reg. at 62,336. We agree that any effort to provide additional guidance regarding the definition of fugitive emissions should be the topic of a separate proceeding. Because the CAA requires rulemaking before a source of fugitive emissions can be counted towards major source thresholds, *see* CAA section 302(j) (A “major stationary source” includes “any major...source of fugitive emissions ...as determined by rule by the Administrator.”), and in order to ensure fair notice to regulated parties, any future guidance on the treatment of fugitive emissions should be in the form of rulemaking and should apply prospectively only.

Thank you for the opportunity to comment on this important reconsideration.

Respectfully,

Matt Dogali
President & CEO
American Distilled Spirits Alliance